

117TH CONGRESS
2D SESSION

S. _____

To impose restrictions on the investment in Chinese companies by tax-exempt entities.

IN THE SENATE OF THE UNITED STATES

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To impose restrictions on the investment in Chinese companies by tax-exempt entities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Dump Investments in
5 Troublesome Communist Holdings Act” or as the
6 “DITCH Act”.

1 **SEC. 2. RESTRICTION ON INVESTMENT IN CHINESE COMPA-**
2 **NIES BY TAX-EXEMPT ENTITIES.**

3 (a) IN GENERAL.—Section 501 of the Internal Rev-
4 enue Code of 1986 is amended by adding at the end the
5 following new subsection:

6 “(s) RESTRICTION ON INVESTMENT IN CHINESE
7 COMPANIES.—

8 “(1) IN GENERAL.—An organization shall not
9 be treated as described in subsection (c) or (d) or
10 section 401(a) for any taxable year if such organiza-
11 tion—

12 “(A) holds any interest in a disqualified
13 Chinese company at any time during such tax-
14 able year, or

15 “(B) fails to timely transmit the annual re-
16 port described in paragraph (5) for such tax-
17 able year.

18 “(2) DISQUALIFIED CHINESE COMPANY.—For
19 purposes of this subsection—

20 “(A) IN GENERAL.—The term ‘disqualified
21 Chinese company’ means any corporation—

22 “(i) that is incorporated in China, or

23 “(ii) more than 10 percent of the
24 stock of which (determined by vote or
25 value) is held (directly or indirectly

1 through any chain of ownership) by any of
2 the following (or combination thereof):

3 “(I) 1 or more corporations de-
4 scribed in clause (i).

5 “(II) China or any governmental
6 agency thereof.

7 “(III) Provincial, regional, mu-
8 nicipal, Special Administrative Re-
9 gions, prefecture, county, township,
10 village, or any other Chinese sub-na-
11 tional governmental entity or agency.

12 “(IV) Any entity controlled (di-
13 rectly or indirectly) by the Chinese
14 Communist Party or any Chinese
15 Communist Party organ.

16 “(V) Any Chinese national.

17 “(B) APPLICATION TO ENTITIES OTHER
18 THAN CORPORATIONS.—In the case of any busi-
19 ness organization which is not a corporation,
20 subparagraph (A) shall apply to such organiza-
21 tion in the same manner as though such organi-
22 zation were a corporation.

23 “(C) APPLICATION TO INDIRECT, DERIVA-
24 TIVE, OR OTHER CONTRACTUAL INTERESTS,
25 ETC.—For purposes of this subsection, an orga-

1 nization shall be treated as holding an interest
2 in a disqualified Chinese company if such orga-
3 nization—

4 “(i) holds such interest (or any instru-
5 ment described in subparagraph (A)) di-
6 rectly or indirectly through any chain of
7 ownership, or

8 “(ii) holds any derivative financial in-
9 strument or other contractual arrangement
10 with respect to such interest or company
11 (including any financial instrument or
12 other contract which seeks to replicate any
13 financial return with respect to such inter-
14 est or such company).

15 “(D) PUBLICATION OF LIST BY SEC-
16 RETARY.—The Secretary shall, not later than
17 120 days after the date of the enactment of this
18 subsection, establish a process for the periodic
19 publishing of a list of certified pooled invest-
20 ments, including exchange traded funds and
21 mutual funds, that do not have exposure to dis-
22 qualified Chinese companies.

23 “(3) WAIVERS.—

24 “(A) IN GENERAL.—Paragraph (1) shall
25 not apply with respect to any interest in a dis-

1 qualified Chinese company held by any organi-
2 zation during any taxable year if the Secretary
3 issues a waiver to such organization with re-
4 spect to such interest for such taxable year
5 under this paragraph. Any waiver issued under
6 this paragraph shall be subject to renewal or
7 expiration on a biannual basis.

8 “(B) WAIVER PROCESS.—

9 “(i) APPLICATION.—Not later than 60
10 days after the date of the enactment of
11 this subsection, the Secretary shall estab-
12 lish a process under which an organization
13 may submit a written application for a
14 waiver under this paragraph. Such applica-
15 tion shall be made publicly available and
16 shall include the following:

17 “(I) An explanation of the need
18 for such waiver and the reasons that
19 the need for such waiver outweigh the
20 threat posed to the United States by
21 China and the lack of separation be-
22 tween China and the disqualified Chi-
23 nese company involved.

24 “(II) The type (including sector
25 of the economy), amount, and dura-

1 than the earlier of the termination of
2 the extenuating circumstances re-
3 ferred to in clause (i)(IV) or the end
4 of the biannual period referred to in
5 subparagraph (A)).

6 “(C) STANDARDS FOR DETERMINING IF
7 WAIVER IS PROVIDED.—The Secretary may pro-
8 vide a waiver under this paragraph only if the
9 Secretary independently determines that—

10 “(i) the need for such waiver, and the
11 reasons for the need for such waiver, out-
12 weigh the threat posed to the United
13 States by China and the lack of separation
14 between China and the disqualified Chinese
15 company involved, and

16 “(ii) extenuating circumstances justify
17 the applicant’s need to invest in the dis-
18 qualified Chinese company.

19 For purposes of this subparagraph, the Sec-
20 retary shall not consider the past or future fi-
21 nancial returns of any investment in any dis-
22 qualified Chinese company, or any other jus-
23 tification based on the applicant’s own financial
24 needs, as an extenuating circumstance justi-
25 fying such an investment.

1 “(D) PUBLICATION OF WAIVERS PRO-
2 VIDED.—With respect to each calendar quarter,
3 the Secretary shall publish and make publicly
4 available a list of the waivers provided by the
5 Secretary under this paragraph during such
6 quarter.

7 “(4) CHINA.—For purposes of this section, the
8 term ‘China’ means the People’s Republic of China
9 and includes any subordinate Special Administrative
10 Regions thereof.

11 “(5) ANNUAL REPORT.—Each organization de-
12 scribed in paragraph (1) with respect to each taxable
13 year shall, not later than the due date for the return
14 of tax for such taxable year, transmit to the Sec-
15 retary a written report including—

16 “(A) a description of each interest in a dis-
17 qualified Chinese company held by such organi-
18 zation during such taxable year,

19 “(B) the period during which such interest
20 was so held, and

21 “(C) whether such organization has a
22 waiver under paragraph (3) to hold such inter-
23 est during such period.”.

24 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendment made by
2 this section shall apply to taxable years ending after
3 the date of the enactment of this Act, except that
4 only periods after the date that is 270 days after the
5 date of the enactment of this Act shall be taken into
6 account in determining whether the requirement of
7 section 501(s) of the Internal Revenue Code of 1986
8 (as added by this section) is met with respect to any
9 taxable year.

10 (2) 1-YEAR GRACE PERIOD UNDER CERTAIN
11 CIRCUMSTANCES.—In the case of organization that,
12 after intensive due diligence, is unaware of the fail-
13 ure to satisfy the requirement of such section
14 501(s), paragraph (1) shall be applied by sub-
15 stituting “1 year” for “270 days”.

16 (c) PUBLIC REPORT.—Not later than 360 days after
17 the date of the enactment of this Act, and annually there-
18 after, the Secretary of the Treasury (or the Secretary’s
19 delegate) shall publicly release a report describing the pat-
20 terns of United States outbound investment in China, in-
21 cluding such investment by organizations described in sec-
22 tion 501(s)(1) of the Internal Revenue Code of 1986 (as
23 added by this section). Such report shall detail the sectoral
24 breakdown of such investments.